

MV 97-3

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax - Value Exceeds \$15,000

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	No.
v.)	Assess.
)	
)	
TAXPAYER,)	Alfred M. Walter
)	Administrative Law Judge
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on December 8, 1995, for Use Tax on the purchase of a 1991 BMW 850 1 automobile. At issue is the question whether the liability established herein was rebutted by the testimony of the taxpayer and the exhibits submitted by the taxpayer. The Department's *prima facie* case was established by the introduction into evidence of the aforesaid Notice of Tax Liability indicating a tax due in the sum of \$1335.00 and interest to December 8, 1996 in the sum of \$46.53 for a total tax due of \$1,381.53. Tr. p. 4

Findings of Fact:

1. The Department's *prima facie* case inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tax Liability and Correction of Returns, showing a total liability due and owing in the amount of \$1,381.53. Dept. Ex. No. 1

Conclusions of Law:

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's *prima facie* case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that Lila Clayton, is subject to the standard rate of tax as imposed by the Illinois Private Vehicle Use Tax Act must stand as a matter of law. In support thereof, the following conclusions are made:

1. This taxpayer first prepared a Vehicle Use Tax Return indicating a purchase price in excess of \$15,000. Her explanation for preparing a second return, indicating a purchase price of \$14,500 is not credible. She traveled together with her son to prepare and file the Use Tax Return. Her statement to the effect that she didn't know the purchase price until her son came in and told her he had agreed on a lesser amount simply is not credible.

A more probable explanation for the preparation of the second return is that upon learning that a price in excess of \$5,000 would require a tax of \$1,000, she prepared a second return indicating \$14,500 was the purchase price. Tr. pp. 5-9

2. The exhibits offered by the taxpayer showing copies of money orders payable to the seller total only \$6,000. The receipt ostensibly signed by the seller, indicating "payment" of \$14,000, do not correspond to the stated purchase price of \$14,500. The taxpayer offered no explanation for the discrepancy. The receipt itself is not dated or notarized and does not adequately confirm the \$14,000 was the total sale price. Taxpayer Ex. No. 3

3. The taxpayer offered no evidence to explain how the balance of the purchase price, being the difference between the total money orders of \$6,000 plus the \$2,000 given to some unknown person for transmittal to the seller, was paid. Whether by check, money order, cash, or possibly some other method. Nor does she attempt to explain how the difference was computed to make up the balance. Taxpayer Exhibits 1-4

Based on the foregoing facts and conclusions I recommend that the Notice of Tax Liability and Correction of Return be confirmed as issued.

Alfred M. Walter
Administrative Law Judge